Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY,

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents,

and

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO,

Petitioner,

v.

GEORGE HUFFMAN, Individually, Etc.,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF ON BEHALF OF FORD MOTOR COMPANY, PETITIONER

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Respondents Huffman *et al.* in their brief in opposition, so far as it is addressed to the Petition for Writ of Certiorari of Ford Motor Company, contend that (1) this cause is not of such "magnitude" as should persuade this Court to grant certiorari, (2) the decision of the Court of Appeals is based upon and is not in conflict with decisions of this Court and (3) other reasons cited in support of the

petition are not sufficient to justify the granting of the petition. None of these contentions is tenable.

1. Respondents do not deny petitioner's statements as to the number of different employers, unions, employees, and collective bargaining contracts which may be affected by the decision below. Those statements were based upon information supplied by the United States Bureau of Labor Statistics which is set forth in detail on pages 36-52 of the UAW-CIO Petition for Writ of Certiorari to review the decision of the Court of Appeals.* The conclusion which necessarily follows from such facts is that the general importance of the question to others who are not parties to the case (as well as to the parties) calls for review by this Court. Respondents, being unable to answer this point, assert that such facts are not contained in the record. Naturally that is so, for they bear upon the importance of the decision of the Court of Appeals for purposes of review by this Court, an issue which obviously was not before the Court of Appeals or the District Court.

In challenging petitioner's and UAW-CIO's delineation of the far reaching implications of the decision of the Court of Appeals, respondents argue that, so far, there has been no flood of litigation despite the existence of similar contract provisions for six years or more (Brief in Opp., p. 5). This merely emphasizes the general importance of the decision.

During the six-year period prior to the decision, the provisions in question were regarded as valid, presumably

*Since the filing of the petition, two errors have been discovered in this information. Neither Allis-Chalmers Manufacturing Company nor American Locomotive Company, listed on page 9 of the petition, has ever entered into a contract containing provisions such as those involved in this case.

upon the authority of cases relied upon in the Petition for Writ of Certiorari. Throughout this period, many contracts containing such provisions were entered into and administered by many employers and unions. The contrary decision of the Court of Appeals in this case, if allowed to stand, may open up the door to a vast number of claims of great magnitude. Moreover, such claims, if valid, would have increased in number and amount during the six-year period before this decision.

2. Respondents' contention (Brief in Opp., p. 6) that the decision of the Court of Appeals is not in conflict with, but is grounded upon, decisions of this Court is based upon a line of cases dealing with racial discrimination. Thus, in *Steele* v. *Louisville & Nashville Railroad Co.*, 323 U. S. 192 (1944), this Court held invalid provisions of a contract involving hostile discrimination based upon color alone. Such provisions were characterized as being "obviously irrelevant and invidious" (p. 203). In so holding, this Court concluded that the law imposed upon the statutory representative of a craft "at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates" (p. 202). That a constitutional concept underlay the decision in the *Steele* case is further evidenced by the latest decision in the line of cases relied upon by respondents, *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768 (1952), where a contract provision which effectively excluded negroes from employment was held invalid even though the negroes were not represented by the union as statutory bargaining agent.

Unquestionably the seniority provisions under attack here invade no constitutional principle. Their relevance to the employee-employer-union relationship has been adequately demonstrated (Pet. pp. 15-16) and neither the Court below nor respondents have given any reason for considering them to be otherwise. They are therefore not invalid under the *Steele* case.

Far from supporting the decision of the Court of Appeals, the principle of the *Steele* case requires its reversal. The *Steele* case points out that "differences in seniority * * * are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit" (p. 203).

Moreover, the Court of Appeals has failed to follow the dictates of this Court in *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521 (1949), which in sustaining contract provisions establishing preferred seniority for a group of employees not based upon the duration of employment by the company, emphasizes the necessity for looking to the conventional uses of the seniority system in the process of collective bargaining (p. 526). As the Petition for Certiorari demonstrates, such conventional uses include contract provisions substantially identical with those involved in this case. They have been approved by the War Labor Board (Pet. p. 14), endorsed by the Department of Labor (Pet. p. 14) and included in many labor contracts (Pet. pp. 8-9).

3. The discussion in the Brief in Opposition (pp. 13-14) relating to the other reasons advanced by petitioner for granting the writ is also without merit. Respondents seem to recognize that conflicts or apparent conflicts may exist between the decision of the Court of Appeals and some deci-

sions of other courts relied upon by petitioner (pp. 13, 14), but assert that this is of no importance because the question involved was resolved by this Court in the *Steele* case, *supra*. As petitioner has shown, however, that case calls for a reversal of the decision of the Court of Appeals.

Respondents fail to distinguish the decision of the Court of Appeals in this case from the decisions of federal and state courts which are relied upon in the petition to establish a conflict. Respondents merely assert that, "for the most part", those cases involved contract provisions which set standards that applied to all members of the bargaining unit alike. But each involved a provision which created unfavorable effects upon some employees as opposed to others. Those cases also reveal the interest of other companies, unions and employees in the question involved. The predicament of the many who are so interested is outlined in the petition (pp. 9-11): it is whether to guide their actions by the decision of the Court of Appeals of the Sixth Circuit in this case, or by the decisions of the other courts. The conflict can be resolved only by a decision of this Court.

It is submitted that the decision of the Court of Appeals should be reviewed and reversed.

Respectfully submitted,

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